

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Date	Order with signature of Judge
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Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Abdul Mobeen Lakho.

C.P.No.D- 3021 of 2015

M/s. Azm Chemical Company & othersPetitioners

Versus

Banking Court No.1 & othersRespondents

Date of hearing : 29.11.2019
Date of decision : 18.12.2019

Mr. Sami Ahsan, Advocate for the Petitioners
Mr. Basam Dahri, Advocate for Respondent/MCB
Mr. Irfan Ahmed Memon, DAG

ORDER

MUHAMMAD IQBAL KALHORO J:- Muslim Commercial Bank Limited (**MCB**)/ Respondent No.6 filed a Criminal Complainant No.14/2014 in the relevant Banking Court at Karachi alleging commission of offence U/s 20 (4) of the Financial Institution (Recovery & Finance) Ordinance, 2001 (**FIO, 2001**) against the petitioner against the facts showing that in pursuance of a settlement reached in Suit No.80/2012 filed by MCB for recovery of finance extended to the petitioners, they issued two different cheques towards settlement of liability which on presentation were dishonored. The complaint after due formalities was admitted and brought on regular file vide order dated 30.04.2014 and bailable warrants (**BWs**) were issued against the petitioners in the sum of Rs.50,000/-.

2. At some subsequent stage in the trial, the petitioners raised objection over competency of the complaint on the ground that in respect of subject matter the execution application is already pending, which objection after hearing both the parties has been disposed of vide impugned order by the trial Court holding that criminal trial against the petitioners is maintainable.

3. Learned counsel for the petitioners has prayed for quashment of the complaint in his arguments and has further stated that the cheques were issued to MCB as security in pursuance of settlement reached in Civil Suit No.80/2012, which was compromise decreed; that MCB has filed execution application for implementation of compromise decree which is also pending

in the same Banking Court, and therefore the complaint before that court is not maintainable; that the complaint filed by respondent bank through attorney is incompetent and liable to be dismissed; that proper procedure as provided U/s 200 Cr. P.C. regulating filing of the complaint was not followed. Besides above, learned counsel also referred to various documents available in the file in an attempt to question merits of the complaint.

4. In contra, learned counsel for the Bank and learned DAG have questioned maintainability of this petition on the grounds that petitioners have an adequate remedy before the trial Court in shape of 265-K Cr. P.C. and in case they have material to establish that the learned Banking Court has no jurisdiction to try the case on merits or there are no merits in the case, they could avail the same; that in view of such adequate remedy this petition is incompetent. They further submitted that respondent bank is a banking company having its head office at Lahore and had no option but to file the complaint through the attorney which in view of case law reported in 2018 CLC 1273 and 2017 SCMR 1218 is maintainable.

5. We have considered submissions of the parties and perused material available on record including the case laws cited at bar. The whole emphasis of the petitioners is on the fact that the civil litigation in respect of amount of cheques in the shape of execution application is pending in the Banking Court, and therefore, the criminal proceedings on the same subject matter against them would be not maintainable, which contention, with due respect, we would like to say is not sustainable. The civil suit was filed for recovery of finance and was decreed on the basis of compromise, but the petitioners did not fulfill the commitment as per terms of compromise and defaulted. And when approached in this regard by the bank, they issued subject cheques which on presentation were dishonoured. When the bank did not receive any amount as a result of such compromise, it resorted to both filing of execution application for recovery of amount and a complaint against the petitioners for issuing dishonest cheques. Both the remedies are founded on different connotations with different consequences. The execution application is for recovery of finance, whereas the complaint is against committing offence of giving dishonest cheques u/s 20(4) FIO, 2001. In our view both the remedies can be maintained simultaneously. Even otherwise it is by now settled that criminal proceedings can continue with civil proceedings on the same subject matter and there is no bar in law in this regard. U/s 7 of FIO, 2001, the Banking Court has been empowered to take cognizance of the offences enumerated under u/s 20 thereof on the complaint filed by an authorized person. The petitioners have not raised any question insofar as delegation of

authority to the attorney to file the complaint is concerned. They have only disputed that an attorney cannot file a complaint. The respondent bank is a banking company and can only launch civil or criminal litigation through its authorized officer, which is exactly what has been done by respondent Bank in the present case, therefore, the objection over maintainability of the complaint that it has been filed by the attorney is misconceived and is not sustainable.

6. In the impugned order learned Banking Court has clearly observed that *prima facie* the accused seem to have committed an offence u/s 20(4) FIO, 2001 by giving dishonest cheques. Further, there is no material to show that the petitioners have made good of outstanding amount in terms of two cheques to thwart prospect of any wrong assumption against them.

7. Notwithstanding merits of the constitution petition, which we have discussed tentatively in some detail in preceding para, learned counsel was not able to satisfy the court that how in presence of an adequate remedy to the petitioners U/s 265-K Cr. P.C., this petition for quashment of the complaint would be maintainable. At the insistence of learned defence counsel that proper procedure for bringing the direct complaint on the regular file was not followed, we have had a recourse to relevant provision of law and the material available and have found no illegality by the Banking Court in admitting the direct complaint. After the complaint was filed, the statement u/s 200 Cr. P.C. of the complainant was recorded and only after perusing the same and hearing counsel for the complainant and being satisfied with *prima facie* involvement of the petitioners in the alleged offence, the cognizance of offence was taken and the BWs were issued against them.

8. In view of above discussion, we find no substance in the instant constitution petition, and dismiss it accordingly along with pending application(s) with no order as to costs.

J U D G E

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Rafiq P.A.